



CITY OF SOUTH PORTLAND

CLAUDE V. Z. MORGAN
Mayor

SCOTT T. MORELLI
City Manager

SALLY J. DAGGETT
Jensen Baird Gardner & Henry

EMILY F. SCULLY
City Clerk

April 25, 2019

Assistant Attorney General
U.S. DOJ-ENRD
P.O. Box 7611
Washington D.C. 20044-7611

Re: United States v. Global Partners L.P., et al.
D.J. Ref No. 90-5-2-1-11428

Comment of the City of South Portland on Proposed Consent Decree under the Clean Air Act

On March 25, 2019 the U.S. Department of Justice ("DOJ"), acting through the U.S. Environmental Protection Agency ("EPA"), filed a complaint ("Complaint") and lodged a proposed consent decree ("Consent Decree") with the United States District Court for the District of Maine in the lawsuit entitled *United States v. Global Partners L.P., et al.*, Civil Action 19-cv-00122. The complaint was filed under Section 113(a)(1) of the Clean Air Act, 42 7413(a)(1), and the Maine State Implementation Plan ("SIP"). The United States' Complaint against Global Partners, LP, Global Companies, LLC and Chelsea Sandwich, LLC ("Defendants") alleges emissions of volatile organic compounds ("VOC" or "VOCs") at the Defendants' South Portland, Maine petroleum products storage facility that were potentially and actually in excess of amounts allowed under their current air emission permit issued by the Maine Department of Environmental Protection ("DEP").

The proposed consent decree would require Defendants to (i) pay a civil penalty of \$40,000, plus interest, (ii) perform a supplemental environmental project with a minimum expenditure of \$150,000 involving the replacement of certain woodstoves, (iii) perform certain measures at the Defendants' South Portland facility to control future VOC emissions, and (iv) require the Defendants to apply for an amended license from the DEP. Notice of the lodging of the Consent Decree was originally published in the Federal Register on April 1, 2019. See, 84 FR 12293. The publication of the original notice opened a thirty (30) day period for public comment on the decree.

The South Portland City Council hereby submits this comment in connection with the proposed Consent Decree entered into on March 20, 2019.

District One
CLAUDE V. Z. MORGAN

District Two
KATHERINE W. LEWIS

District Three
MISHA C. PRIDE

District Four
APRIL L. CARICCHIO

District Five
DEQA DHALAC

At Large
MAXINE R. BEECHER

At Large
SUSAN J. HENDERSON

The Consent Decree was filed in federal court on March 25, 2019 simultaneously with a Complaint against Global Partners. The City was not consulted in any way with respect to the issues identified in the Complaint or regarding the Consent Decree, nor was the City even forewarned of the Complaint or Consent Decree's existence. Rather, the City first became aware of EPA claims that the Defendants failed to comply with environmental emissions standards only as a result of an article published in the *Portland Press Herald*.

The Complaint alleges significant violations of the Defendants' emission license including, but not limited to, that VOC emissions from its facility have exceeded 21.9 tons per year, each year, for at least the last five years. Despite these concerning allegations, and the potential serious health consequences for the citizens South Portland if they are true, the Consent Decree's proposed resolution of the issues identified in the Complaint would do nothing to mitigate any impacts resulting from these emissions or to otherwise meaningfully address the claimed violations. The City has repeatedly requested that EPA provide support for the allegations in the Complaint regarding Global Partners' VOC emissions. EPA has refused to respond to that demand and none of the information provided in or along with the Complaint and Consent Decree otherwise helps resolve that question. Moreover, the City is aware that the DEP disputes the EPA's conclusions, but the precise nature of the reasons for this disagreement remain unclear.

The manner in which the government has gone about alleging, and seeking to "resolve", the claimed violations by Global Partners has not been transparent, which in our view is completely unacceptable. Defendants' facility is located in South Portland and it is South Portland's residents who have the greatest stake in assuring that Defendants comply with all environmental regulations at the facility in order to assure a safe and healthy environment for South Portland's residents, including the children who attend schools and daycares in close proximity to that facility. The government's actions to date have demonstrated, at best, an indifference towards South Portland's right to have its say in how the claimed violations are addressed and, at worst, a contempt for the interests of the citizens of South Portland.

Based on the failure to forewarn the City of any of the issues addressed in the Complaint and Consent Decree, and the short time period the City has had to respond to these filings, the City Council has been forced to hold numerous emergency meetings and workshops, filled to overflow capacity and lasting late into the night, in an effort to educate itself and its residents as to the basis for the claimed violations and how best to respond. All of this, as noted above, has been done against a backdrop of EPA's continuing refusal to cooperate with the City Council. Given this refusal by EPA to cooperate with the City, it has been impossible, to date, for the City to fully address its concerns, and the rightful concerns of the citizenry of South Portland, regarding how the past violations alleged by EPA may have already impacted the health and welfare of the City's residents and how these alleged violations may continue to affect the City's residents. Based on the above, the City reiterated its request that the EPA immediately provide all documents and other information supporting the violations claimed in the Complaint, including the amounts by which the EPA alleges Global Partners did, in fact, exceed the licensed amount to VOC emissions.

The City further asks that the Consent Decree be amended such that its entry would only be conditional and with jurisdiction over the matter retained by the Court, with final approval of the Consent Decree deferred until such time as such all relevant documents and information are provided by the EPA and the City is given an adequate time to (a) evaluate the significance of the claimed violations, and (b) make an assessment of the proposed penalty and remedies in light of the violations.

In addition to the foregoing, the City of South Portland requests that the Consent Decree be modified as follows:

1. **The proposed total civil penalty of \$40,000 should be increased to an amount commensurate with the actual violations that occurred and should be assessed using the criteria as provided under law.**

Under each one of the government's four claims for relief presented in the complaint (I - Failure to Obtain Emission License, II - Violation of Emission License, III - Violation of Emission Control Requirements, and IV - Violation of Title V Permit Program Requirements), the civil penalties are:

- a. Up to \$32,500 per day for each violation occurring after March 15, 2004 through January 12, 2009 [$\$32,500 \times 4$ violations = \$130,000 per day];
- b. Up to \$37,500 per day for each violation occurring after January 12, 2009 through November 2, 2015 [$\$37,500 \times 4$ violations = \$150,000 per day];
- c. Up to \$95,284 per day for each violation occurring after November 2, 2015 and assessed on or after January 15, 2017, but before January 15, 2018 [$\$95,284 \times 4$ violations = \$381,136 per day]; and,
- d. Up to \$97,229 per day for each violation occurring after November 2, 2015 and assessed on or after January 15, 2018 [$\$97,229 \times 4$ violations = \$388,916 per day].

The proposed civil penalty of \$40,000, which city residents have called a no more than a "slap on the wrist" to the Defendants, amounts to a mere 30.8% of the lowest level of the four stated allowable fine amounts for one day (viz. 40,000/130,000).

The federal statute cited by the government in its complaint in support of the civil penalties is 42 U.S.C. § 7413(b). 42 U.S.C. § 7413(e) "Penalty assessment criteria" states in pertinent part:

In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. (Emphasis added).

The City recognizes that when the language “up to” is used in a fine schedule, maximum allowable fines are reserved for the most egregious circumstances. However, Article IV – CIVIL PENALTY of the Consent Decree is devoid of any information as to how the \$40,000 civil penalty was calculated and addresses none of the factors that the statute mandates be considered in establishing the penalty amount. It is unclear from the record that any of the penalty assessment criteria were considered at all.

If the violations alleged by the government occurred *for even one day* at the lowest of the penalty amount levels, the fine would be more than tripled (absent any mitigating factors). The government should reassess the civil penalty amount by addressing all of the factors stated in 42 U.S.C. § 7413(e) in a comprehensive and transparent fashion so that the people most affected by the alleged violations – the residents of the City of South Portland – can be confident that justice is in fact being served.

2. Any Civil Penalty assessed by the DOJ should be paid over to the City of South Portland.

The residents of the City of South Portland who live, work or go to school in the vicinity of the alleged emissions violations are the front line stakeholders in this action and yet they are being entirely ignored by the EPA. This cannot stand. As the most aggrieved party in this matter, any civil penalty that is actually assessed should be paid over to the City of South Portland so that it may fund and take appropriate steps to protect its own residents.

3. The Supplemental Environmental Project proposed under Article VI of the Proposed Consent Decree does not make sense from a fairness or environmental benefits perspective, and should be replaced by a project tailored to the community directly impacted by the alleged emissions violations.

Article VI of the Consent Decree requires the Defendants to perform a Supplemental Environmental Project (“SEP”), which is to consist of the replacement and/or retrofitting of “inefficient, higher-polluting wood burning appliances and technologies” in Cumberland County, Maine. The City of South Portland considers this SEP designation as entirely inappropriate given the nature of the alleged emissions violations.

The Complaint alleges serious and longstanding violations of emissions requirements by the Defendants’ release of VOCs into the atmosphere from its South Portland Facility.

The EPA’s own website addresses the health effects of exposure to VOCs and states:

Health effects may include:

- Eye, nose and throat irritation
- Headaches, loss of coordination and nausea
- Damage to liver, kidney and central nervous system
- Some organics can cause cancer in animals, some are suspected or known to cause cancer in humans.

Key signs or symptoms associated with exposure to VOCs include:

- conjunctival irritation
- nose and throat discomfort
- headache
- allergic skin reaction
- dyspnea
- declines in serum cholinesterase levels
- nausea
- emesis
- epistaxis
- fatigue
- dizziness

The EPA goes on to further state on its own website that:

The ability of organic chemicals to cause health effects varies greatly from those that are highly toxic, to those with no known health effect.

As with other pollutants, the extent and nature of the health effect will depend on many factors including level of exposure and length of time exposed. Among the immediate symptoms that some people have experienced soon after exposure to some organics include:

- Eye and respiratory tract irritation
- headaches
- dizziness
- visual disorders and memory impairment

Source: <https://www.epa.gov/indoor-air-quality-iaq/volatile-organic-compounds-impact-indoor-air-quality>.¹

Yet despite publishing and warning against these known short- and long-term health effects of exposure to VOCs and the factors that can affect the extent and nature of those health effects, the EPA's Consent Decree entirely ignores potential public health repercussions to the residents of the City of South Portland from exposure to the Defendants' emissions.

The City takes great exception to this astonishing oversight, especially in light of the utter lack of its involvement in any aspect of the EPA's process leading up to the lodging of the Consent Decree.

¹ The City is aware that the source relates to indoor air quality. However, as the EPA website indicates, the effects of VOCs are variable based on the type of VOC, the concentration and the duration of exposure. Further, many City of South Portland residents have complained during repeated public hearings that the noxious odors permeate the interiors of their homes and the entire neighborhood.

The City recommends that the SEP should be scrapped and refocused so that the Defendants would be required to entirely fund the following critical initiatives:

- A. **Air Quality Monitoring Program.** A comprehensive and long-term air quality monitoring program across the City of South Portland that (i) is designed by experts in the field of air quality testing, (ii) is overseen by the City, or a third party or agency acceptable to the City, and (iii) includes the acquisition, installation, maintenance and repair of multiple stationary monitoring stations as well as the acquisition of mobile monitoring devices that can be used to respond promptly to specific complaints from residents and isolate suspected sources of emissions. The air quality program should include the cost to train City personnel in the use of the air quality monitoring devices and interpreting the data obtained.
- B. **Public Health Survey.** A public health survey for South Portland community residents that (i) is designed by experts in the field of public health and toxicology, and (ii) is overseen by the City, or a third party or agency acceptable to the City, which focuses on symptoms specifically linked to exposure to VOCs, with particular focus on children, the elderly, people with asthma and other population subsets considered to be more susceptible to the effects of exposure to VOCs.
- C. **Public Health Officer.** A City public health officer to educate the public as to the concerns relating to exposure to VOCs, receive and respond to air quality related complaints from City residents, and ensure that emissions and air quality related data is collected comprehensively for appropriate analysis and action.
- D. **Reduced Reliance on Fossil Fuels.** A program to incentivize home weatherization, including the installation of heating and cooling equipment, such as including heat pumps and solar panels, in the homes of City residents with low and moderate incomes so as to reduce fossil fuels emissions.

4. **The Compliance Requirements of Article V of the Consent Decree Should be Amended.**

Consent Decree Article V – “Compliance Requirements” – imposes a number of measures that are to be implemented by the Defendants at their South Portland facility.

- A. **Vent Capture Ducts.** Section 11.d. identifies certain “Supplemental Measures” consisting of “mist eliminators” that the Defendants are to install within 180 days of the Effective Date “in accordance with the work plan set forth in Appendix A to this Consent Decree.” However, Appendix A makes reference to both mist separators and vent capture ducts. References to the vent capture ducts should be included in Section 11.d.
- B. **Best Practical Treatment through Capture and Odor Elimination.** Had the EPA accepted the invitation to attend at any one of the workshops held by the City, it would have heard the numerous complaints from residents regarding the strong and persistent noxious odors believed to be emanating from the tank farms located on the waterfront, of which Global is one. The Supplemental Measures should, therefore, be augmented to include a requirement to install, and upgrade as available, the best commercially available equipment to eliminate VOC emissions to the maximum extent possible, including through the use of passive and active VOC recovery systems, cryo-condensation process VOC recovery systems, vapor capture and recovery units, appropriate absorber technology. The emissions technology should particularly focus on the limiting and elimination of the emission of noxious odors in all aspects of bulk

fuel and asphalt transfer and storage on the Defendants' facility, regardless of whether those odors are related to the emission of VOCs or not.

C. Notifications to the City of South Portland as a Partner.

The City should be notified of all Notices of Violation issued by the EPA to Global and to any other licensee in the City of South Portland that is subject to the jurisdiction of the EPA, should be notified by the EPA of any violation of any consent decree that is ultimately entered, and informed of any inspections in South Portland and the results of those inspections.

5. Consent to the Proposed Decree Should be Withdrawn or Withheld.

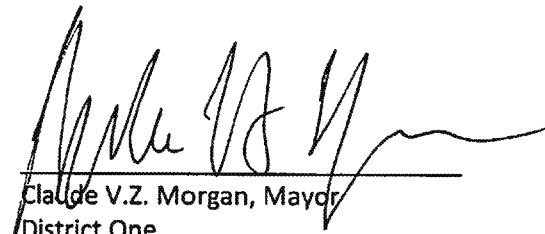
42 U.S.C. § 7413(g), provides:

The Administrator [of the EPA] or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter.

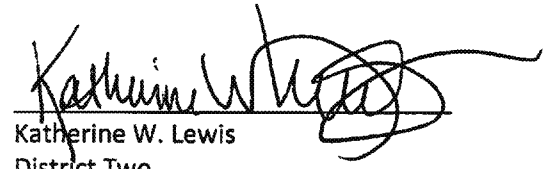
The City's comments have disclosed facts regarding the inappropriate secret proceedings that resulted in the proposed Consent Decree, the failure to advise the City of alleged emissions violations, the failure to include the City in the negotiation of the Consent Decree, the failure to respond to all City requests for information regarding the alleged emissions violations and the EPA's failure to participate in and inform the public deliberation process. Even the tactic of filing the Complaint simultaneously with the proposed Consent Decree had the effect of providing the City with zero advance notice of the alleged violations and denying it the ability to participate in the formulation of an appropriate Consent Decree that took the concerns of City residents into account.

Based on all of the foregoing, the Administrator or the Attorney General should withdraw or withhold his consent to the proposed Consent Decree as such consent would be inappropriate, improper, inadequate, or inconsistent with the requirements of Chapter 85 of Title 42 of the U.S. Code.

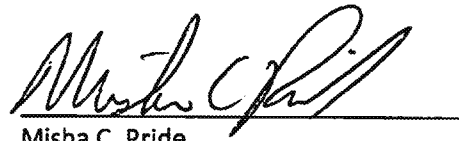
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Claude V.Z. Morgan, Mayor
District One




Katherine W. Lewis
District Two




Misha C. Pride
District Three



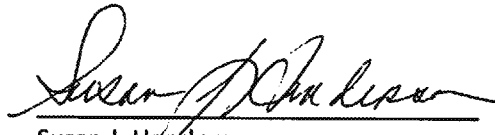
April L. Caricchio
District Four



Deqa Dhalac
District Five



Maxine R. Beecher
At Large



Susan J. Henderson
At Large

cc: The Honorable Susan M. Collins
The Honorable Angus S. King
The Honorable Chellie Pingree
Paul F. Driscoll, Esq.
Adrian P. Kendall, Esq,